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LESS THAN IT APPEARS
LIMITATIONS OF THE SENATE BUDGET RULES

INTRODUCTION

On 16 October 2002, the Senate temporarily extended two of its own rules that are intended to help prevent the consideration of budget-busting bills. The procedures, which had expired on 30 September, are now to remain in place until 15 April 2003.

But the conditions surrounding these Senate rules leave their potential impact in doubt. As will be shown below, they cannot substitute for a budget resolution – which the Senate never passed this year – or for the statutory budget controls that expired at the end of fiscal year 2002. Most important of those controls were the caps on discretionary spending, and the pay-as-you-go [PAYGO] rule for entitlement and tax legislation.

The discussion below is intended to describe the Senate budget procedures and their limitations.

THE SENATE PROCEDURES

What They Are

The Senate procedures were adopted in an amendment to S.Res. 304 – a resolution urging the Senate Appropriations Committee to report 13 appropriations bills by 31 July 2002. The amendment extended the stipulation that certain budget-related rules can be waived only by a vote of 60 Senators – a requirement mainly intended to prevent the consideration of any spending measure that exceeds the reporting committee's allocation. The amendment also extended the Senate's so-called PAYGO rule, which requires offsets to entitlement and tax legislation. This rule, too, can be waived only by a vote of 60 Senators.

The rules apply only in the Senate, and each point of order is enforced only if a Senator raises it on the floor against the offending measure, and it is not waived. The effect is to preclude further consideration of the measure. More specifically, the rules are as follows:

- *Threshold for Exceeding Committee Allocations* – Under section 302(f) of the Congressional Budget Act, the House and Senate are prohibited from considering legislation that would increase spending beyond the levels permitted in the budget resolution. That rule is permanent; but the Senate's 60-vote requirement for waiving it expired on 30 September. The Senate rule applies to both the Appropriations Committee, for discretionary spending, and to the authorizing committees for new or expanded entitlements.

- *Senate PAYGO Rule* – This rule, if invoked, prohibits the Senate from considering any entitlement or tax measure that would increase the deficit (or reduce the surplus). The rule was initially intended as a companion to the statutory PAYGO discipline itself. Under the Senate rule, legislation must be deficit-neutral in the first year, the first 5 years, and the second 5 years. This requirement can be satisfied by entitlement or tax legislation that offsets the deficit impact.

In addition to extending the 60-vote requirement for waiving the 302(f) rule, the Senate resolution extends the supermajority requirements relating to proposed changes to Social Security; the consideration of special resolutions that would modify or suspend automatic spending cuts; and the requirement that the Appropriations Committee subdivide its discretionary allocation among its subcommittees.

What They're Not

The effect of these procedures is limited in the absence of more fundamental budgetary disciplines. They cannot substitute for the following:

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- *A Budget Resolution* – The Senate resolution in no way constitutes a budget resolution, which provides the Congress a fiscal blueprint to guide its consideration of spending and tax legislation. Although the House in March passed a budget resolution for fiscal year 2003 (which began on 1 October), Congress as a whole did not – because the Senate never passed its own version. The Senate's S.Res. 304 establishes neither a ceiling on spending nor a floor for revenue, as a budget resolution would. Similarly, it does not impose limits on discretionary spending or committee-by-committee limits on entitlement spending.

  Under the usual process, the budget resolution establishes the allocations that are enforced by the 302(f) point of order. In the absence of a budget resolution, the prior year's allocations are enforced. Hence, the Senate resolution will enforce the allocations that were made as part of the budget resolution for fiscal year 2002, which ended on 30 September.

- *A "Deemer"* – Absent a budget resolution conference report, the House or Senate can pass a resolution "deeming" certain levels to be enforced. It is a one-House resolution that applies only in the chamber in which it is passed. Still, it provides a fallback budgetary mechanism in the event the House and Senate fail to reach agreement on a budget. The House adopted such a resolution in May, as the Senate continued to delay action on a budget resolution.

  But the Senate procedures extended last week do not amount to a "deemer." As noted above, they are procedural enforcement measures with no realistic budgetary framework to be enforced.

- *Statutory PAYGO* – The Senate PAYGO point of order is markedly different from the *statutory* PAYGO requirement (which also expired on 30 September). Statutory PAYGO – if it were still in place – would be triggered automatically by the enactment of any legislation that increases the deficit; it would not depend on a Senator raising it through a point of order. Hence, statutory PAYGO would have to be addressed somehow. If the legislation were not deficit-neutral, the Senate would have to: 1) offset the deficit increase through other entitlement or tax legislation; 2) reset the PAYGO "scorecard," which requires a deliberate legislative action; or, 3) face a potential sequester.

- *Discretionary Spending Caps* – Like statutory PAYGO, statutory caps on discretionary spending would apply automatically. They would not need a further affirmative action, such as a point of order.

Will They Matter?

The ultimate impact of extending these rules depends on the Senate's willingness to enforce them. As both the PAYGO and 302(f) rules are enforced by points of order, they will have little impact if no Senator raises one or the other, or if a supermajority of Senators vote to waive it.

The Senate's track record on enforcement is decidedly mixed. According to the Congressional Research Service, the PAYGO point of order has been raised on only six occasions in 9 years, and on two of the occasions the rule was waived. Earlier this year, before the PAYGO rule expired, the Senate adopted an amendment to the Department of Defense authorization that increased military retirement and veterans' disability benefits by about $46 billion over 10 years above the level permitted in the budget resolution. Not one Senator raised the point of order against this, and the amendment was adopted by a wide margin.

On the other hand, the 302(f) point of order was successfully used to block consideration of a series of amendments expanding Medicare above levels permitted by the fiscal year 2002 budget resolution.

CONCLUSION

Budgetary rules are nearly always welcome, if they are credible and meaningful. These two Senate rules, however, are likely to be worthwhile only if their limitations are clearly understood. As noted above, they apply only to the Senate, not to Congress as a whole; they do not apply automatically, but only if a Senator raises them and they are not waived; and they are procedural only – they do not have the force of law that existed with the statutory disciplines of spending caps and PAYGO.

Finally, they cannot take the place of a budget resolution, the cornerstone of the fiscal process. Without a budget, the Senate still has no fiscal blueprint, ratified by a consensus of its Members, against which to measure any budgetary rules it may put in place. A budget is both a statement of priorities, and the basic yardstick of fiscal discipline. There is no substitute.

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